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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,836	06/15/2007	Matthew Eric Smith	KILBU P-92/500728.20118	5495
26418	7590	04/30/2009	EXAMINER	
REED SMITH, LLP ATTN: PATENT RECORDS DEPARTMENT 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			04/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,836	Applicant(s) SMITH ET AL.	
	Examiner JAMES N. SMALLEY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. The claims are objected to because they include reference characters which are not enclosed within parentheses. Specifically, claim 1, as amended, references skirt (18) and flange (20). Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4, 6-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutt US 4,640,435 in view of Yost US 5,452,818.

Dutt '435 teaches a lid and a pressurized container, comprising a neck (12) defining an opening, a closure plate (50), a dependent skirt (56), and a continuous annular flange (10, 72).

The reference teaches all limitations substantially as claimed, but does not teach this connected by a resilient hinge.

Yost '818 teaches a closure for a pressurized beverage container, comprising an end panel which is held in sealing contact by a continuous annular flange (18) which is connected to a sidewall (16) at a hinge point (unlabeled). The reference teaches the flange forms a continuous seal (as described in column 4, lines 2-3), and it also inherently provides tension to hold the closure in place (as the closure is taught to be held "firmly in place" in column 4, lines 51-52). It is known that a longer arm, such as that of

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Yost '818, creates additional leverage through a bending moment, compared to a shorter flange, such as that already in place on Du't '435.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Dutt '435, replacing the annular flange with the continuous annular flange taught by Yost '818, motivated by the benefit of creating additional leverage through a bending moment, which ultimately results in a more firm seal.

Regarding claim 14, the radial thickness increases with distance from the flange.

4. Claims 5 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutt US 4,640,435 in view of Yost US 5,452,818, as applied above to claims 1 and 4, and further in view of Smalley US 4,501,371.

Dutt '435, as applied above, teaches all limitations substantially as claimed, but fails to teach a rupture tab which, upon rotation, causes the seal of the container to be broken and the snap-fit connection to be released.

Smalley '371 teaches a closure and seal for a container, and furthermore teaches a rupture tab (20), the upwards rotation of which causes the cap to fracture and release the seal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Dutt '435, providing the release tab taught by Smalley '371, motivated by the benefit of providing a user means to release the seal and fracture the lid.

Regarding claim 15, the radial thickness increases with distance from the flange.

5. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutt US 4,640,435 in view of Yost US 5,452,818, as applied above to claim 1, and further in view of Martinelli US 4,106,653.

Dutt '435, as applied above, teaches all limitations substantially as claimed, but fails to teach a lateral flange which can be laterally deflected.

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Martinelli '653 teaches a lateral flange (28) in a tear-away snap-on closure, which deflects to seal against the lip of a container opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Dutt '435, providing the annular seal taught by Martinelli '653, motivated by the benefit of providing additional sealing about the container opening.

Regarding claim 15, the radial thickness increases with distance from the flange.

Response to Arguments

6. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit
3781

/James N Smalley/
Examiner, Art Unit 3781